



DLA Piper LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104
www.dlapiper.com

Keara M. Gordon
keara.gordon@dlapiper.com
T 212.335.4632
F 212.884.8632

November 23, 2015

Via ECF

Honorable Raymond J. Dearie, United States District Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Dover, et al. v. British Airways, PLC (UK)*, No. 12-cv-05567 (E.D.N.Y.)

Your Honor:

We write on behalf of British Airways PLC (“BA”) in relation to the plaintiffs’ motion for sanctions, dated November 10, 2015 (Dkt. No. 167) (“Sanctions Motion”). On Friday, November 20, 2015, BA submitted its opposition to the Sanctions Motion (Dkt. No. 196) and that same day, the parties’ filed their reply motions in support of *Daubert* motions to exclude expert testimony. In support of the plaintiffs’ motion to exclude the expert testimony of Dr. Andrew K.G. Hildreth, their reply memorandum included an expert report from an entirely new expert, Robert Engle, Ph.D., in flagrant violation of the Federal Rules of Civil Procedure and this Court’s scheduling orders. Under the Court’s order, the plaintiffs’ deadline to file expert reports was May 4, 2015 – more than six months ago – and the plaintiffs already had an opportunity to submit a responsive report to Dr. Hildreth’s analysis this past September.

This purported designation by the plaintiffs of a new expert after the close of discovery, after BA submitted its opposition to the plaintiffs’ class certification motion, upon the completion of *Daubert* briefing, and less than one month before the deadline for BA’s summary judgment motion is outrageous, particularly considering the plaintiffs’ recent filing of the Sanctions Motion against BA after its production of ten documents in compliance with its discovery obligations. As briefing on the Sanctions Motion concludes tomorrow, BA respectfully requests that the Court allow BA time to file a motion for sanctions against the plaintiffs in regards to this new expert designation before the Court rules on the Sanctions Motion, which will allow the Court to decide the two motions together, if it so chooses.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Keara M. Gordon'.

Keara M. Gordon